United Nations CRPD/C/SR.190

Convention on the Rights of Persons with Disabilities

Distr.: General
21 April 2015

Original: English

Committee on the Rights of Persons with Disabilities
Thirteenth session

Summary record (partial)* of the 190th meeting
Held at the Palais Wilson, Geneva, on Thursday, 9 April 2015, at 3 p.m.

Chairperson: Ms. Cisternas Reyes

Contents

Consideration of reports submitted by States parties under article 35 of the Convention (*continued*)

Initial report of the Cook Islands

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages of the United Nations. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.15-07870 (E) 160415 210415

1507870

Please recycle

The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 35 of the Convention (*continued*)

Initial report of the Cook Islands (CRPD/C/COK/1; CRPD/C/COK/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of the Cook Islands took places at the Committee table.*

2. **Mr. Glassie** (Cook Islands), introducing his country's initial report (CRPD/C/COK/1), said that positive developments over the past decade in the realization of the rights of persons with disabilities included the translation of the Convention and disability legislation and policies into the local Maori language and the strengthening of the capacity of service providers and the National Disability Council; those steps forward demonstrated the increased awareness of disability in the Cook Islands.

3. The Cook Islands, with a resident population of 12,400, was regarded as a leader on disability matters in the Pacific Islands region. Financial and technical support from the Governments of New Zealand and Australia, the Secretariat of the Pacific Community, the Pacific Islands Forum Secretariat and the United Nations Economic and Social Commission for Asia and the Pacific had helped the country to make significant progress in respect of disability rights even before ratifying the Convention and the Optional Protocol thereto, in 2009.

4. Since the submission of its initial report, the Cook Islands had introduced the National Inclusive Education Strategy 2011–2016, included disability in the National Sustainable Development Plan 2011–2015 and women and girls with disabilities in the National Gender Equality and Women's Empowerment Policy 2011–2016, and addressed discrimination against persons with disabilities in the workplace in the Employment Relations Act 2012. In addition, the principles of the Convention were reflected in the Education Act 2012 while the draft ageing policy covered disability. As part of the modernization of the Crimes Act 1969, derogatory language had been removed from the text. The Family Law Bill was expected to give legal effect to child protection provisions in the Convention on the Rights of the Child, including protection for those who were dependent on others for help with daily living because of a disability.

5. The Cook Islands Integrated National Strategic Plan for Sexual and Reproductive Health 2014–2018 provided, inter alia, for training for health-care providers on the requirements of persons with special needs and their families. Drafting of the Cook Islands mental health policy was under way. A caregivers' allowance had been introduced for those caring for persons with disabilities, and the Government provided special means-tested assistance on a case-by-case basis to older persons and persons with severe disabilities to improve accessibility and mobility. Media campaigns were conducted on the rights of persons with disabilities.

6. The new Cook Islands Policy on Disability Inclusive Development 2014–2018, which was subject to Cabinet endorsement, was in line with the Convention, the Incheon Strategy to Make the Right Real for Persons with Disabilities in Asia and the Pacific, and the Pacific Regional Strategy on Disability. The goal of the Policy was to improve the quality of life and realize the rights of persons with disabilities by empowering them and facilitating their inclusion and participation in all aspects of life. The Policy comprised nine priority areas with a range of activities under each one: awareness and advocacy on the rights of persons with disabilities; support to families, caregivers and self-help groups; education and training, cultural life, leisure, recreation and sports; rehabilitation; early identification and intervention; livelihoods; data and research; partnership, coordination, and mainstreaming disability-inclusive development within the Government and civil

society; and women and girls with disabilities. Measures provided for under the Policy included updating legislation to bring it into line with the Convention, enhancing the services of disability centres on the outer islands, providing vocational training for income generation, increasing access to appropriate assistive devices, promoting employment in the private sector with reasonable accommodation as required, ensuring that disaster risk reduction planning and management were disability inclusive, and establishing a working group on women and disability.

7. Awareness training on the Convention had been conducted on three islands by the Ministry of Internal Affairs and the National Disability Council, with the participation of government officials, community leaders, civil society, service providers, students, persons with disabilities and their families. The database framework for the collection of data on persons with disabilities was currently being modified; it was expected that the data would be disaggregated by age, sex, form of disability, geographic location and socioeconomic background. Given the challenges faced by the Cook Islands, which included a declining population, diseconomies of scale and a lack of resources and capacity, it would look to its development partners to assist it in making further progress.

8. **Ms. Kingston** (Country Rapporteur) said that the Cook Islands was to be commended on the National Disability Policy and Action Plan 2008–2012, which had fully embraced the spirit of the Convention. The Committee very much looked forward to the forthcoming replacement policy and action plan, and it welcomed the fact that the Convention had been translated into the local Maori language and widely disseminated.

9. Noting that one of the objectives of the Island Government Act 2012-13 was to encourage community participation in the governance of each island, she said that the Committee would very much like to see persons with disabilities involved in that process. In that connection, it applauded the "To be seen, heard and counted" campaign, aimed at making persons with intellectual disabilities feel included in society. If the situation of persons with disabilities in the Cook Islands was to be improved, they must be routinely invited to participate in decisions affecting them and in shaping disability policy.

10. The number of persons with disabilities who left the State party, either temporarily or permanently, in order to seek accessible and inclusive education and health-care services in New Zealand because of inadequate provision in the Cook Islands was a cause for concern, since, if persons with disabilities left the islands, there would no longer be any incentive to improve service provision and conditions.

11. She was surprised at the lack of accessible information and communications, in particular the lack of trained sign language interpreters for deaf persons, of Braille and audio facilities for blind persons and of easy-to-read formats for persons with intellectual disabilities. Basic provision of assistive devices also seemed to be lacking and overly dependent on overseas development assistance and the voluntary sector. Although the population of deaf and blind persons in the Cook Islands might be small, there was still a need to ensure the participation of every individual; by failing to do so, the Cook Islands was losing its citizens to New Zealand and Australia and with them the richness and diversity of the population.

12. Early identification and intervention for children with disabilities was critical. There appeared, however, to be a lack of coordination for a coherent and effective approach in that area, with no set procedures in place for referrals to paediatric specialists or data collection. It was to be hoped that, as a result of the current family and criminal law reform process, corporal punishment of children, which was still lawful in the home, would be prohibited in all settings at all times.

13. It seemed that persons with disabilities were often not aware of their rights and did not know how to make complaints in case of violations of those rights. While it was

commendable that the concept of "reasonable accommodation" had been incorporated in the Disability Act 2008, the definition was not compliant with the Convention, and the law's stipulation that "reasonable accommodation cannot be applied to fundamental rights" was a matter of great concern. Those were the very rights to which reasonable accommodation must apply, and denial of reasonable accommodation must be explicitly recognized as disability-based discrimination.

14. Women and girls with disabilities were apparently not fully included in society and had poor outcomes in education and employment, especially in the outer islands. For women and girls with disabilities who experienced violence, there seemed to be a lack of counsellors specifically trained to communicate with and assist them, and there were no places of safe shelter.

15. Persons with disabilities were very reliant on family members for personal assistance, rather than having the freedom and budget to choose an assistant of their own. There appeared to be a lack of professional support, as well as the potential for families to abuse the allowance paid to persons with disabilities. Accessible footpaths, street signage, pedestrian crossings and toilets were reportedly also lacking.

16. She was concerned about the high level of intentional self-harm, including suicide, among younger people in the Cook Islands. Community-based support systems across all the islands were essential for psychosocial well-being. Lastly, given that the State party's legislation still allowed for substitute decision-making for persons with psychosocial or intellectual disabilities, she would be interested to hear about any plans to amend it so as to support persons with disabilities to make their own decisions about their own lives.

Articles 1–10

17. **Mr. Tatić** noted that, although the Disability Act provided for the possibility of lodging complaints of disability-based discrimination, no complaints had yet been submitted. He asked what plans were in place to raise awareness and build capacity among persons with disabilities so that they could make use of that legal remedy. In the same vein, he would be interested to hear how the system of fines for failure to apply accessibility standards was implemented in practice. He would also welcome updated information on specific measures to make pavements and pedestrian crossings in urban areas accessible and further details on the accessibility of sea and air transport.

18. **Mr. Langvad** asked what initiatives were taken to ensure that persons with disabilities or their representative organizations were systematically consulted on disability-related issues and how more vulnerable groups of persons with disabilities, such as deaf-blind persons and persons with psychosocial or intellectual disabilities, were included in decision-making processes. In that connection, he would be interested to know more about funding for organizations of persons with disabilities to enable them to effectively fulfil their role as partners in developing disability policy and tackling disability-related issues in all parts of the Cook Islands, including the most remote islands.

19. He would appreciate information on mechanisms to receive complaints concerning denial of reasonable accommodation and on the steps taken to raise awareness among persons with disabilities of what constituted disability-based discrimination. He also wished to know how children with disabilities were given the opportunity to express themselves. He wondered whether persons with disabilities in all areas of the Cook Islands had access to helplines providing guidance and advice.

20. With regard to accessibility, he asked how the State party ensured that persons with disabilities, regardless of their impairment, were able to travel between islands by air and sea, with the help of a personal assistant if necessary.

21. Lastly, he enquired what measures the State party was taking to ensure that corporal punishment of children or adults with disabilities was not the result of a lack of knowledge or awareness on the part of parents, teachers or others of the particular behaviours associated with impairments such as autism and with developmental or psychosocial disabilities.

22. **Ms. Degener** asked whether the State party adopted a twin-track approach to tackling multiple discrimination against women with disabilities by, on the one hand, mainstreaming such women in national gender policies and, on the other, establishing specific protection programmes for them. She enquired how the State party ensured that children with disabilities were protected from abuse, neglect and violence and what was being done to make sure that officials were qualified to work with and protect the rights of such children.

23. **Mr. Buntan** asked how, given the small size and dispersed nature of the Cook Islands population, the State party was able to ensure the provision of effective, quality services for persons with disabilities, in line with the Convention, while maintaining a community-based approach, and how persons with disabilities and their representative organizations were involved in that process. He also wished to know how the State party intended to strengthen and increase the participation of persons with disabilities, through their representative organizations, in the work of decision-making bodies.

24. **Ms. Peláez Narváez** said that the Committee shared the concern expressed in the concluding observations of the Committee on the Rights of the Child on the initial report of the Cook Islands to that body (CRC/C/COK/CO/1) about social attitudes in the State party towards children with disabilities, particularly girls, which prevented such children from expressing their opinions, even within the family unit.

25. The Committee was also concerned about the right to life, survival and development of children with disabilities, given the remoteness and limited economic resources of the Cook Islands, and about respect for such children's civil rights and liberties, notably their right to privacy. She noted that many girls with disabilities who were victims of incest, sexual abuse or early pregnancy did not have recourse to social and welfare services and that families often decided not to report cases of sexual abuse to the authorities. She asked what legislation, policies and programmes the State party planned to adopt to ensure the protection of and respect for children with disabilities.

26. She enquired whether the State party had amended its definition of the child, as requested by the Committee on the Rights of the Child in its concluding observations, noting that a girl could be married at the age of 16 in the Cook Islands with her parents' consent.

27. **Ms. Quan-Chang** asked whether the State party intended to bring the definition of disability contained in the Disability Act and other domestic legislation into line with that in the Convention and what was being done to raise awareness among persons with disabilities of the Office of the Ombudsman.

28. **Ms. Kingston** said that she would appreciate information on awareness-raising training on disability rights, not only for persons with disabilities themselves and their representative organizations, but also for State officials, judicial personnel and employers. She asked whether the State party had taken steps to promote positive images of persons with disabilities. She also wished to know whether there were plans to provide training and information to members of the judiciary, the public and organizations of persons with disabilities on legal remedies that were available to victims of disability-based discrimination and on the Optional Protocol to the Convention.

29. She enquired whether the State party had any plans to repeal legislation that discriminated against persons on the grounds of disability, such as the Entry, Residence and Departure Act 1971-72, the Electoral Act 2004 and a number of other laws permitting substitute decision-making, involuntary confinement and forced treatment.

30. She asked whether the State party intended to set up a mechanism that would allow women and girls with disabilities to be formally consulted and to participate in the legislative and political spheres. Lastly, she requested information on funding for and accessibility of shelters for women victims of violence in the State party.

31. **Ms. Pavey** asked for information on any planned awareness-raising campaigns designed to change traditional attitudes towards persons with disabilities.

32. **Mr. Basharu** requested information on the portrayal of persons with disabilities in the media.

33. **The Chairperson**, speaking in her personal capacity, said that she would welcome further information on the Early Identification and Intervention project and on its results to date.

The meeting was suspended at 4.15 p.m. and resumed at 4.45 p.m.

34. **Ms. Henry** (Cook Islands) said that, in recent years, the authorities had adopted a more coordinated approach to dealing with child victims of sexual abuse. The Crown Law Office was responsible for prosecuting alleged perpetrators of such acts and the national police force for enforcing the Crimes Act. Other State agencies provided counselling services and safe houses for victims of abuse, working in partnership with NGOs. There had been a number of successful prosecutions of cases of child sexual abuse.

35. The judiciary in the Cook Islands comprised justices of the peace, who were laypersons. Most cases involving serious offences were therefore dealt with by judges who travelled from New Zealand for the purpose. National judicial officials, for their part, had received general training on human rights, provided by the Regional Rights Resource Team of the Secretariat of the Pacific Community.

36. Her Government intended to bring the definition of disability contained in domestic legislation into line with that in the Convention. The Entry, Residence and Departure Act was currently under review, and the problem of disability-based discrimination would be addressed as part of that process. The definition of the child varied from one piece of legislation to another, depending on the context. Amendments were required to bring the definition of the child contained in the Marriage Act into line with that in the Convention on the Rights of the Child.

37. Consultations were held with persons with disabilities, their families and their representative organizations concerning the development of policy and legislation on disability. So long as resources were available, such consultation would continue.

38. Under the Disability Inclusive Development Project, which received financial support from the Australian Government, civil servants, persons with disabilities and their families and organizations were provided with training on the Convention and information on the role of the Ombudsman, including instructions on how to lodge a complaint with his or her office. Organizations of persons with disabilities and disability centres offered assistance with that process. However, given the lack of complaints received thus far, there was clearly a need to ensure that persons with disabilities were better informed of their rights and of the legal remedies available to them.

39. The Early Identification and Intervention project had been set up, also under the Disability Inclusive Development Project, in an effort to minimize the incidence of disability. It brought together representatives of the ministries of education, health and

internal affairs, the National Disability Council and relevant service providers. The Education Act prohibited corporal punishment in educational establishments. However, her Government needed to examine the issue of the use of corporal punishment within the family unit.

40. The media promoted a positive image of persons with disabilities. A number of relevant documentaries, funded by external partners, had aired on national and regional television stations. The Ministry of Internal Affairs produced programmes intended to increase awareness of issues affecting persons with disabilities and of the facilities and services available to them.

41. Admittedly, more work was needed to ensure the accessibility of buildings and to incorporate provisions to that effect in the Building Code. Current shortcomings were partly attributable to the challenges stemming from the great distances between the islands and their relatively sparse populations.

42. In partnership with the New Zealand Government, core funding was provided for the National Disability Council and for disability learning centres on five of the outer islands. Through those funds, financial support was available to service providers and to programmes for physiotherapists and occupational therapists carrying out rehabilitation initiatives on the main island of Rarotonga and on the outer islands.

43. **Mr. Mitchell** (Cook Islands) said that air and sea passenger and cargo transport services to and from the outer islands were infrequent and expensive and that the remoteness and small populations of the islands did not justify more regular service. In those circumstances, there had, regrettably, not been adequate focus on ensuring the accessibility of transport services for persons with disabilities; that did not, however, preclude the introduction of necessary improvements in the future.

44. In conjunction with the telecommunications company of the Cook Islands, a helpline had been set up within the Ministry of Internal Affairs to provide emotional support, primarily to young people. Callers were put in touch, free of charge, with a trained counsellor in New Zealand.

45. **Mr. Glassie** (Cook Islands) said that, for the most part, on the outer islands extended families in villages voluntarily assumed responsibility for the care of their family members with disabilities. Organizations of persons with disabilities could request funding from government ministries, and his Government maintained standing requests for financial assistance for those organizations from international donors as well. Among the areas that his Government still needed to address were the provision of sign language and Braille facilities, the development of local, rather than international, expertise in counselling, and the training of sufficient professionals to provide all the necessary services for persons with disabilities.

Articles 11–20

46. **Mr. Al-Tarawneh** said that he was concerned at reports of the increasing vulnerability of people and development processes in the Cook Islands to natural and man-made disasters. He asked how the Government ensured that persons with disabilities were provided for in the National Action Plan for Disaster Risk Management 2009–2015.

47. **Mr. Tatić** asked whether, given the deeply-rooted role of the extended family in the Cook Islands, caregivers' allowances were paid to the families of persons with disabilities, rather than to the latter directly. He wondered whether such allowances were ever paid directly to caregivers who were not members of the right holder's family. Lastly, he wished to know what measures were taken to ensure that users of personal assistants, meaning persons with disabilities, had the opportunity to choose their personal assistant themselves.

48. **Mr. Langvad** said that one way to reduce the reliance of persons with disabilities on their extended families, accommodation in New Zealand or Australia, or placement in institutions or hospitals, would be for the Government to set up independent living schemes under which persons with disabilities could employ either family members or others living nearby as personal assistants, which would allow them to stay in their native villages on their home islands or freely to choose another place of residence. It might be helpful to organize awareness-raising on appropriate living arrangements for persons with disabilities and to take account of new technologies and other solutions when providing guidance in that regard.

49. **Mr. Buntan** suggested that the challenges facing the Cook Islands on account of the vast distances separating the islands might be seen as opportunities, and not necessarily as problems. He asked whether the Government had explored the possibility of obtaining accessible information and communication technologies as a way to improve the lives of persons with disabilities who preferred to live with their extended families in their own island communities, without forfeiting access to education, health or counselling services. The Cook Islands, as a country in which English was spoken, might be able to obtain information in alternative formats and accessible information and communication technologies from New Zealand or Australia quite easily, rather than develop its own systems. The latter option might not be cost-effective, owing to the absence of economies of scale in the Cook Islands. He wondered whether any consideration had been given to using those technologies as part of the national programmes on disaster risk reduction. The traditional care provided by the extended family might also be seen as an opportunity and not a problem if creative solutions could be found for its development as a new model of disability inclusion in the family and community.

50. **Mr. Kim** Hyung Shik said he was concerned that encouraging persons with disabilities to seek disability services in New Zealand or Australia could diminish the level of investment in those services in the Cook Islands. He was also concerned about the practice of assessing the mental health of immigrants before deciding whether to grant them entry to the country. Was that not a form of discrimination against persons with disabilities?

51. **Mr. Basharu** asked what specific measures were taken to provide support for persons with disabilities, especially blind and deaf persons and wheelchair users, in humanitarian emergencies.

52. **Ms. Degener** asked what plans the State party had to bring its legislation and practice into conformity with article 12 of the Convention with regard to the prohibition of substitute decision-making. The Committee's general comment No. 1 (2014) contained specific information on what it considered States parties' obligations to be under the article.

53. She wished to know what measures were being taken to address the fact that a high number of women with disabilities were subjected to violence, especially sexual violence. She enquired whether the Government was considering mainstreaming disability in its anti-violence programmes while at the same time taking specific action to protect women and girls with disabilities against all forms of violence. Had any consideration been given to revising the Criminal Code in order to expressly prohibit forced sterilization and forced abortion?

54. **Ms. Quan-Chang** said that she wished to know what possibilities existed for organizations of persons with disabilities to participate in or influence the allocation of budgets for policies, programmes and institutions that were intended for persons with disabilities. She asked whether, in the short or medium term, the Government envisaged prohibiting the institutionalization or deprivation of liberty of individuals with disabilities, primarily psychosocial disabilities.

55. **Ms. Peláez Narváez** asked for an example of specific measures the State party had taken to guarantee the right of children with disabilities to express their opinions and have them taken into account. She enquired whether there were plans to amend the Criminal Code so that it did not criminalize abortion in cases of rape or incest, a recommendation that had been made to the State party by other United Nations human rights treaty bodies.

56. **Mr. Pyaneandee** said that the small size of the Cook Islands population could be seen as an advantage in that it facilitated the task of awareness-raising regarding the rights of persons with disabilities. One of the State party's top priorities should be to bring its definition of disability into line with that in the Convention; once that had been accomplished, persons with disabilities could more easily assert their rights under national law, notably the right to access to justice. If the Government did envisage amending its definition of disability, he wondered what strategy it would use and when the amendment would be adopted.

57. **Ms. Kingston** asked whether the State party had any plans to repeal laws that permitted substitute decision-making, which restricted the access to the courts of persons with disabilities, and whether it intended to amend its legislation to enable supported decision-making. It was important to provide accessible information and communications, including sign language interpretation, along with physical access to the courts, legal aid and procedural accommodations, even if only one deaf person, for example, requested access to the courts. She would be grateful for additional information on the training provided to personnel in the justice, law enforcement and prison systems on the application of human rights standards for persons with disabilities, including those on reasonable accommodation, accessibility and procedural accommodations.

58. **The Chairperson**, speaking in her personal capacity, said the fact that judges from New Zealand travelled to the Cook Islands to hear cases seemed to suggest that legal training was not provided in the latter. If that was the case, there was a potentially adverse impact on access to justice for persons with disabilities. Similarly, she wished to know whether there were prisons in the Cook Islands and, if so, whether national prison staff were trained in the Cook Islands or abroad. She was concerned that the location of prisons and staff training facilities outside the country might impede the State party's ability to ensure that prison policies were consistent with its obligations to provide full accessibility and reasonable accommodation to persons with disabilities in prisons. She would welcome clarification of the kinds of procedural adjustments that were made for effective access to justice, aside from accessible formats of communication.

59. With regard to liberty and security of person, she wished to know whether there were effective legal safeguards for criminal defendants with disabilities who were brought to trial in the Cook Islands. Lastly, she would appreciate having the delegation's views regarding the provision made in the Cook Islands Entry, Residence and Departure Act that made it unlawful for any person who was "mentally defective" to enter the country, subject to determination by the Director of Health.

The discussion covered in the summary record ended at 5.50 p.m.